

State of California
BOARD OF EQUALIZATION

CIGARETTE AND TOBACCO PRODUCTS TAX REGULATIONS

Regulation 4700. APPEAL - EXCISE TAXES DIVISION.

Reference: Sections 22974.7, 22978.7, 22979.7, Business and Professions Code.

- (a) **Time For Filing.** A written Request for Appeal, as defined in subdivision (c), below, must be filed within 10 days of the date the Warning Notice or Notice of Violation was mailed to or personally delivered to the licensee or unlicensed person.
- (b) **Failure to File a Timely Appeal.** If a written Request for Appeal is not filed within the 10-day period, the licensee or unlicensed person shall be deemed to have waived his or her right to an appeal and the Warning Notice or Notice of Violation, and the penalty or penalties stated therein, shall become final.
- (c) **Request for an Excise Taxes Division Appeal.** The Request for Appeal shall state the specific grounds upon which the licensee or unlicensed person is contesting the Warning Notice or Notice of Violation and shall be accompanied by any and all documentation and written argument to be considered in support of the appeal. The Request for Appeal shall be signed by the licensee or unlicensed person or by an authorized representative.
- (d) **Notice of Conference.** After receiving a timely Request for Appeal the Excise Taxes Division will schedule a conference and send a Notice of Conference stating the date and time of the scheduled conference to the licensee or unlicensed person. The Notice of Conference shall be sent to the licensee or unlicensed person at least 15 days prior to the date of the scheduled conference.
- (e) **Conference.** The conference is intended to be an informal, non-adversarial proceeding with a discussion of the relevant facts and applicable laws and regulations. Written statements made under penalty of perjury may be submitted, but subpoenas are not issued for conferences, nor is sworn testimony required. The conference will be conducted by telephone and shall not be recorded and/or transcribed by the Excise Taxes Division. The conference may be recorded and/or transcribed by the licensee or unlicensed person, but only if the licensee or unlicensed person agrees to provide a copy of the recording or transcript to the Excise Taxes Division.
- (f) The Excise Taxes Division may grant one request to reschedule or postpone a conference. If a request is granted, the conference shall be rescheduled or postponed so that it can be held within 15 days of the date the conference was scheduled to be held prior to the granting of the request, unless the Chief of the Excise Taxes Division or his or her designee approves of a later date.
- (g) During a conference, the Excise Taxes Division may grant a request for additional time to submit additional evidence. If additional time is granted, the evidence shall be submitted to the Excise Taxes Division no later than 7 days after the conference date.
- (h) **Decision.** Following the conference, the Excise Taxes Division shall issue a Notice of First Decision. The Notice of First Decision will set forth the Excise Taxes Division's decision, the applicable penalty or penalties, and the licensee's or unlicensed person's appeal rights.
- (i) A licensee or unlicensed person who receives a Notice of First Decision may appeal the decision within 10 days of the date the Notice of First Decision was mailed or personally delivered to the licensee or unlicensed person by timely filing a Request for Appeals Conference, as specified in Regulation 4701, subdivision (a), with the Board Proceedings Division.
- (j) **Failure to File a Timely Appeal.** If a Request for Appeals Conference is not filed within the 10-day period provided in subdivision (i), then the licensee or unlicensed person shall be deemed to have waived his or her right to an appeal and the Notice of First Decision, and the penalty or penalties stated therein, shall become final.

History: Adopted December 12, 2006, effective April 21, 2007.